

REMARKS

Claims 42, 44, 45, 92, 93, 95, 96, 105, 108, 111, and 114 are being amended.

Claims 1-129 are pending in this application.

§ 101 Rejection of Claims 106-108

Applicants respectfully traverse the rejection of claims 106-108 under 35 U.S.C. § 101 as directed to non-statutory subject matter.

The Office Action alleges, "Applicant's specification, (See pg. 51), identifies the computer-readable media as 'a carrier wave received from a network such as the Internet.' When nonfunctional descriptive material is recorded on some computer-readable medium, in a computer or on an electromagnetic carrier signal, it is not statutory since no requisite functionality is present to satisfy the practical application requirement." (Office Action, page 2, numbered paragraph 2).

The computer-readable media recited in claims 106-108 do not contain merely "nonfunctional descriptive material" as alleged in the Office Action. MPEP § 2106.01 provides examples of "nonfunctional descriptive material": "'Nonfunctional descriptive material' includes but is not limited to music, literary works, and a compilation or mere arrangement of data" (emphasis added).

Each of claims 106-108 recites a computer-readable medium that contains functional "instructions." The instructions recited in claims 106-108 clearly do not constitute "music, literary works, . . . a compilation or mere arrangement of data," or any other type of nonfunctional descriptive material. Rather, the instructions recited in claims 106-108 have the functionality that is recited in these claims.

Thus, since claims 106-108 recite functional material, Applicants respectfully request that this rejection of claims 106-108 under 35 U.S.C. § 101 be withdrawn.

§ 102(e) Rejection of Claims 1-129 over *Wittenkamp*

Applicants respectfully traverse the rejection of claims 1-129 under 35 U.S.C. § 102(e) as anticipated by U.S. Patent Application Publication No. 2002/0082028 to *Wittenkamp* ("*Wittenkamp*"). To properly anticipate Applicants' claims under 35 U.S.C. § 102, each and every element as set forth in the claim must be found, either expressly or inherently described, in a single prior art reference. See M.P.E.P. § 2131. *Wittenkamp* fails to anticipate claims 1-129 because *Wittenkamp* does not teach each and every element of these claims.

Independent claim 1 is not anticipated by *Wittenkamp* for at least the reason that *Wittenkamp* fails to disclose a method comprising, inter alia, "intercepting a communication from a calling party to a device associated with a particular user," as recited in claim 1.

Wittenkamp discloses, "[a] telecommunication environment 10 . . . , such as commonly exists in an office, which has both a voice network in the form of a POTS network 12 and an IP network 14 . . . [A]n outside calling device 20, referred to generally as 'caller' 20, calls into the POTS network 12 and is connected to a Private Branch Exchange (PBX) 22 serving the office location. The call may be routed, according to the POTS network 12 in this example, to a telephone receptionist using a voice telephone 23." (Paragraph [0023]).

Wittenkamp continues, “[u]pon learning the intended destination of the call at device 23, the call may be placed in a park queue 24 A server 27 is preferably used to broadcast a paging message 28(a . . . n) to the IP nodes in the IP network 14.” (Paragraph [0024]). *Wittenkamp* discloses, “[t]he IP nodes, or data terminals, in this case PC terminals 30(a . . . n), receive paging message 28(a . . . n) providing information regarding the identity of the called party” (Paragraph [0025]). According to *Wittenkamp*, “[e]ach terminal 30(a . . . n) may have an associated voice network node 32(a . . . n), in this example a POTS of the type typically found in an office, located in the proximity of the terminals 30(a . . . n).” (Paragraph [0026]). *Wittenkamp* further discloses, “the recipient of the paging message 28(b) may choose to accept or decline the call by using buttons 42 or 44, respectively. . . . [U]pon an indication of willingness to accept the call by input from the ‘accept’ button 42, the server 27 routes the call from the queue position 46 to the telephone device 32(b) associated with the accepting terminal 30(b).” (Paragraph [0028]).

However, *Wittenkamp* does not disclose “intercepting a communication from a calling party to a device associated with a particular user,” as recited in claim 1 (emphasis added). Instead, *Wittenkamp* discloses that a caller (20) calls “into the POTS network 12” to speak “to a telephone receptionist” for “the office location.” A paging message 28(a . . . n) is then broadcast to all of the IP nodes in the IP network (14), without any association between the IP nodes and the identity of the called party. However, calling a telephone receptionist at an office location to broadcast a paging message to all of the IP nodes on a network does not constitute sending a communication “to a device associated with a particular user,” as recited in claim 1.

Moreover, since the calling party in *Wittenkamp* does not direct a communication to any “device associated with a particular user,” *Wittenkamp* also cannot disclose “intercepting” such a communication. Thus, for at least these reasons, *Wittenkamp* fails to disclose a method comprising, inter alia, “intercepting a communication from a calling party to a device associated with a particular user,” as recited in claim 1.

Independent claims 16, 41, 52, 67, 92, 103, 106, 109, and 112 are not anticipated by *Wittenkamp* for reasons similar to those explained above in relation to claim 1.

Independent claim 17 is not anticipated by *Wittenkamp* for at least the reason that *Wittenkamp* fails to disclose a method comprising, inter alia, “initiating a first call to a device of the calling party” and “initiating a second call to the preferred device of the user,” as recited in claim 17 (emphasis added). *Wittenkamp* is silent on the matter of “initiating a first call to a device of the calling party” and “initiating a second call to the preferred device of the user,” as recited in amended claim 17 (emphasis added). Moreover, the Office Action fails to indicate where the “initiation” of such “first” and “second” calls can allegedly be located in *Wittenkamp*. Independent claims 40, 68, 91, 104, 107, 110, and 113, are not anticipated by *Wittenkamp* for similar reasons to claim 17.

Independent claim 42 is not anticipated by *Wittenkamp* for at least the reason that *Wittenkamp* fails to disclose a method comprising, inter alia, “after the state associated with the user has been stored, receiving a request for information pertaining to the user [and] retrieving the stored state associated with the user,” as recited in

amended claim 42 (emphasis added). *Wittenkamp* is silent on the matter of “after the state associated with the user has been stored, receiving a request for information pertaining to the user,” as recited in amended claim 42 (emphasis added). Independent claims 93, 105, 108, 111, and 114, as amended, are not anticipated by *Wittenkamp* for similar reasons to amended claim 42.

Independent claim 129 is not anticipated by *Wittenkamp* for at least the reason that *Wittenkamp* fails to disclose a method comprising, inter alia, “presenting the calling party with an appropriate overlay to communicate with the preferred device of the user based on the ascertaining,” as recited in claim 129. For example, broadcasting the paging message (28(a . . . n)) to the called party of *Wittenkamp* does not constitute “presenting the calling party an appropriate overlay to communicate with the preferred device,” as recited in claim 129, for at least the reason that the “called” party described in *Wittenkamp* does not constitute a “calling” party as recited in claim 129. Thus, *Wittenkamp* does not disclose a method comprising, inter alia, “presenting the calling party with an appropriate overlay to communicate with the preferred device of the user based on the ascertaining,” as recited in claim 129.

Thus, since *Wittenkamp* fails to disclose each and every element of independent claims 1, 16, 17, 40-42, 52, 67, 68, 91-93, 103-114, and 129, these claims and claims 2-15, 18-39, 43-51, 53-66, 69-90, 94-102, and 115-128, which depend therefrom, are not anticipated by *Wittenkamp*.

§ 103(a) Rejection of Claims 25-31, 48, 49, 76-82, 99, and 100 over *Wittenkamp* and *Frey*

Applicants respectfully traverse the rejection of claims 25-31, 48, 49, 76-82, 99, and 100 under 35 U.S.C. § 103(a) as unpatentable over *Wittenkamp* in view of U.S. Patent No. 6,535,596 to Frey et al. ("*Frey*").

Claims 25-31, 48, 49, 76-82, 99, and 100 are allowable over *Wittenkamp* and *Frey* for at least the reason that these claims depend from independent claims 17, 42, 68, and 93. *Wittenkamp* does not teach or suggest the elements of independent claims 17, 42, 68, and 93 for the reasons explained in detail above.

Frey does not make up for these deficiencies of *Wittenkamp* because *Frey* also fails to teach or suggest the elements discussed above. Moreover, the Examiner does not rely on *Frey* for any teaching or suggestion of these elements (see, e.g., Office Action, page 8, numbered paragraph 27).

Thus, for at least the reason that *Wittenkamp* and *Frey* do not render obvious independent claims 17, 42, 68, and 93, claims 25-31, 48, 49, 76-82, 99, and 100, which depend therefrom, are allowable over *Wittenkamp* and *Frey*.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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Dated: June 27, 2008

By: _____

A handwritten signature in black ink, appearing to read "Reece Nienstadt", written over a horizontal line.

Reece Nienstadt
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